

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Keoea Coleman,

Plaintiff,

v.

Case No. 09-12993

Commissioner of Social Security,

Honorable Sean F. Cox

Defendant.

ORDER
ADOPTING REPORT AND RECOMMENDATION

Plaintiff Keoea Coleman (“Plaintiff”) filed this action under 42 U.S.C. § 405(g), challenging a final decision of Defendant Commissioner denying her application for Disability Insurance Benefits and Supplemental Security Income. The parties have filed motions for summary judgment based on the administrative record, which were referred to Magistrate Judge Steven Whalen pursuant to 28 U.S.C. § 636 for issuance of a report and recommendation.

On August 26, 2010, Magistrate Judge Whalen issued his report and recommendation (“R&R”) wherein he recommends that the Court deny Plaintiff’s Motion for Summary Judgment and grant Defendant’s Motion for Summary Judgment.

Pursuant to FED. R. CIV. P. 72(b), a party objecting to the recommended disposition of a matter by a Magistrate Judge must file objections to the R&R. “The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge’s disposition to which specific written objection

has been made.” *Id.*

On September 7, 2010, Plaintiff filed written objections to Magistrate Judge Whalen’s R&R. The Government filed a written response to those objections on September 21, 2010.

Plaintiff objects to Magistrate Judge Whalen’s conclusion that substantial evidence supports the ALJ’s decision that Plaintiff did not meet Listing 12.05(c). Plaintiff asserts that no medical evidence supports the ALJ’s decision that she does not have a condition which satisfies Listing 12.05. Plaintiff asserts that the ALJ’s own “opinion is not medical evidence to reject the opinions of not only [her] physician but Social Security’s own doctors.” (Pl.’s Objs. at 5).

The Court finds Plaintiff’s objections without merit. Although the State agency reviewing psychologist, Dr. DeLoach, found that Plaintiff has mild mental retardation (MMR), he also found that she does not have any other mental impairments and that her condition *does not* satisfy the criteria of Listing 12.05(c). (*See* Admin. Record at 300-304). Thus, the Administrative Record contains medical evidence to support the ALJ’s conclusion that Plaintiff does not meet Listing 12.05.

This Court agrees with Magistrate Judge Whalen’s conclusion that, under the applicable substantial evidence standard, the ALJ’s determination in this matter is well within the “zone of choice” accorded the administrative fact-finder.

Accordingly, IT IS ORDERED that Magistrate Judge Whalen’s August 26, 2010 R&R is ADOPTED and Plaintiff’s Objections are OVERRULED.

IT IS FURTHER ORDERED that Plaintiff’s Motion for Summary Judgment is DENIED

and that Defendant's Motion for Summary Judgment is GRANTED.

IT IS SO ORDERED.

S/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: September 28, 2010

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 28, 2010, by electronic and/or ordinary mail.

S/Jennifer Hernandez

Case Manager